IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.178 OF 1998
IN
WRIT PETITION NO.5445 OF 1989

Nashik Workers Union ...Petitioner

V/s.

Hindustan Aeronautics Ltd. ..Respondent

Shri.Bhavesh Parmar i/b Colin Gonsalvis for the petitioner.
Shri.Piyush Shah for the respondent.

CORAM : D.G.KARNIK, J.

DATED : 22/08/2006

P.C.:-

1. Heard learned counsel for the parties.

2. This contempt petition is filed alleging that respondent has committed breach of an undertaking given to this Court on 9th February, 1990 in writ petition No.5445 of 1989.

3. Respondent had been imparting training to the apprentices under the Apprenticeship Act. Respondent had also been absorbing the trained apprentices in regular employment after completion of their training. The apprentices who had received apprenticeship

training under the respondent are members of the petitioner-Union. Respondent could not absorb some of the apprentices and services of some of them were terminated on account of paucity of orders from the Defence Department. The apprentices filed a writ petition, bearing Writ Petition No.5445/1989, challenging the action of respondent. The writ petition came for hearing before a Division Bench, wherein the respondent made a statement which was recorded by the Division Bench by passing the following order:-

> “Learned Counsel for the respondent makes statement before this Court here recorded to the effect that as and when vacancies arise, the petitioners and others similarly situate will be given first preference in filling up the said vacancies and the said filling up will be in order of their respective seniority, but subject to the petitioners and others similarly situate being found otherwise qualified.”

4. According to the petitioner the respondent has committed breach of the undertaking given by the

respondent to this Court on 9th February, 1990 by employing other persons, in preference over the apprentices-members of the petitioner.

5. It may be noted that respondent had not given any undertaking to the court to employ the members of petitioner-Union. It had only stated that the petitioners in that writ petition and others similarly situate would be given preference in filling up of vacancies, subject to their seniority and subject to they being found otherwise qualified.

6. In para 4 of the affidavit in reply, respondent has stated that in May, 1996 it found necessary to engage Engineering degree and diploma holders in various specialised disciplines at its Nashik Division. Due to the upgradation of the aircrafts involving improved technology only graduate and diploma holders (in Engineering) were required. Therefore graduate and diploma holder engineers were inducted. None of the apprentices-members of petitioner Union are graduate or diploma holder engineers. Therefore employment was not offered to them in the vacancies which arose in May 1996. In the rejoinder filed by the petitioner, it is

not averred that any person who was not a graduate or diploma holder engineer was offered employment in May, 1996. Thus, contention of respondent that they only required graduate and diploma holder engineers is unrebutted. The apprentices who are members of petitioner Union, admittedly, were not qualified for the appointment.

7. Some temporary vacancies arose for the post of Fireman Group B. The requirement of personnel was temporary and not permanent. Therefore, the respondent offered to fill up those vacancies not on permanent basis but on contract basis. Before filing up these vacancies on contract basis, the respondent offered the said posts to the apprentices whose services were previously terminated. Letters for interview were sent, but none of them appeared for the test/interview. Even if when there was no permanent vacancy, the respondent did offer the work opportunity to the the apprentices-members of petitioner Union. Even while making temporary appointments, the respondent complied with their undertaking in letter and spirit by offering the jobs to the members of petitioner Union. They declined the offer by not appearing for the test and interview.

8. Learned counsel for the respondent submits that the statement made before court on 9th February, 1990 in writ petition No.5445 of 1989 was not an undertaking to the court and therefore no action in contempt can be taken. I have come to conclusion that respondent has complied with said statement made before the court. Hence, it is not necessary to consider whether the said statement was in the nature of an undertaking.

9. Counsel also invited my attention to the decision dated 13th April, 2005 of this court in Contempt Petition No.232/2003 dismissing the contempt petition. It is not necessary to refer to the said decision as, on the facts of present case, I am satisfied that no breach has been committed by the respondent of any undertaking given or statement made before the court in Writ Petition No.5445 of 1989.

10. For these reasons, there is no merit in the Contempt Petition which is hereby dismissed.

D.G.KARNIK, J.